

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Bagdad and Chino Valley,)
Arizona))

MM Docket No. 95-124
RM-8727

To: The Chief
Allocations Branch

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COMMENTS

Rainbow Broadcasting, Inc. ("RBI"), the licensee of Station KBZR(FM), Coolidge, Arizona, by its attorneys and pursuant to Sections 1.415 and 1.420 of the Commission's Rules, hereby files its Comments in the above-referenced proceeding involving the requested substitution of Channel 280C3 for Channel 280A at Bagdad, Arizona, the reallocation of Channel 280C3 from Bagdad to Chino Valley, Arizona, and the modification of the construction permit for Station KAKP(FM), Bagdad, Arizona. In support thereof, RBI states as possible.

1. The instant proceeding involves a request by a party that is the permittee of the only authorized station at Bagdad to upgrade its channel to a higher class and to relocate it from Bagdad to Chino Valley. What sets this proceeding apart from the norm is that the Petitioner (21st Century Radio Ventures, Inc.) has, in the absence of impediments to construction, never constructed the Station at Bagdad and, apparently, does not intend to do so. Likewise, Bagdad does not have any operating transmission service and Petitioner's permit is the only one

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authorized for the community.¹ RBI submits, and intends to establish herein, that not only does the requested actions violate the rules but they represent a bad public policy decision by allowing a party to secure a construction permit for an isolated rural community, never build the station, then move that permit from the community and leave the community with no media voice. Consequently, RBI urges the Commission to deny the instant request and ensure that Bagdad has the media voice it is entitled to.

2. The critical element of Petitioner's request is that the Commission should reallocate the only authorized radio station at Bagdad to another community. Pursuant to Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870, 4974 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("MO&O"), the Commission will not remove the only aural transmission service authorized to a community. While there are exceptions to this rule, Petitioner does not meet the exceptions.

3. Petitioner's claim that it is entitled to the requested changes in the rules is predicated on the station not being an "existing service" owing to it not have been constructed.² Petitioner argues that such a conclusion is supported by the

¹ The NPRM notes the filing of an application for a construction permit on Channel 276C3 at Bagdad.

² RBI submits that to distinguish an unbuilt station from a constructed one makes no sense whatsoever. What it does is provide a benefit the party that has not carried out the obligations of its construction permit while preventing the party that has built its station from an equal benefit. RBI sees no logic in such an arrangement.

terms of the MO&O; RBI disagrees. The MO&O clearly provides that the removal of a channel from a community, especially an unserved rural community, such as Bagdad, is to be looked upon with disfavor. While the Commission is more concerned with the impact of disruption from the removal of an operating station, the MO&O does not provide an absolute right for a permittee to seek reallocation if it avoids its responsibility to complete construction within the required term of the permit. In fact, the Commission itself has not spoken to this matter.

4. The cases relied upon by Petitioner show that a permittee must present some public interest benefit in order to remove the only authorized station, even an unbuilt station, in a community. In Sanibel and San Carlos Park, Florida, 10 FCC Rcd 7215 (1995), the Bureau amended the Table of Allotments to substitute San Carlos Park for Sanibel based on a showing that a change in the Table of Allotments was the only means for service to be commenced by the permittee. The permittee made a well substantiated showing as to impossibility for it to secure a site, due to environmental restrictions, that would allow it to construct a station that could serve Sanibel. It supported this showing with evidence that Sanibel had reception service from at least 17 stations. Id. No such documentation is on the record in this case.

5. Likewise, in Glencoe and Le Sueur, Minnesota, 7 FCC Rcd 7651 (1992), the permittee was able to establish that "despite diligent efforts" it had been unable to initiate operations at

its authorized community due to spacing limitations and the inability to secure land use approval in the limited available area for location of a transmitter site. The permittee also showed that the rural community was already served by four stations, one of which maintained its main studio in the community. Again, no such showing is made, or even attempted, by Petitioner.

6. Finally, in Pawley's Island and Atlantic Beach, South Carolina, 8 FCC Rcd 8657 (1993), the permittee was able to show that the community of Pawley's Island had a second construction permit authorized, not just allotted, to it. As a result, the community was not left without an authorized facility as a result of the change in allotments. Bagdad does not have any other channels with an authorized permittee.

7. In evaluating the NPRM, the Commission must not ignore the public interest. This requires the Commission to consider that it has already conducted a rule making proceeding to allot Channel 280 to Bagdad. As a result of the decision to allot the channel to Bagdad, Petitioner filed an application with the Commission and represented therein that it was ready, willing and able to construct the facility. It has failed to carry out its commitment for reasons that have never been specified and now seeks to abandon the community in favor of a larger one that, apparently, appeals to it more. The public of Bagdad has an entitlement to receive broadcast service and deserves more from

Petitioner than Petitioner's self-serving interests.³ Clearly, the Section 307(b) allocation procedures that led to the Commission's decision to allot the channel to Bagdad overcome any party's own financial interests in seeing the channel moved elsewhere.

7. Weighing the allocation criteria against Petitioner's interests, it is evident that the public's entitlement to transmission service overrides Petitioner's desire to have its station authorized to a larger community. RBI agrees that the record establishes that Chino Valley is a community entitled to broadcast service. Therefore, the Commission should seriously consider allotting a new channel to it, which Petitioner could apply for. This is a procedure that the Commission has taken in other instances. See Atlantic and Glenwood, Iowa, DA 95-1583, released July 25, 1995 (at n. 1). RBI has reviewed this matter and has determined that FM Channel 263C3 can be allotted to Chino Valley in compliance with all Commission allotment rules.⁴ By allotting a new channel to Chino Valley, Petitioner will be able to express its interest in applying for this allotment and file a formal construction permit application to serve the public. This

³ In connection herewith, the Commission cannot ignore the showing contained in Petitioner's Figure 6 that areas and populations with fewer than five signals will lose broadcast service. While the numbers are small, the Commission cannot ignore the fact that this allotment serves an underpopulated rural area and the change in the allotment will result in an elimination of service to parts of this area.

⁴ The Channel 263C3 allotment would require the following coordinates: 34 55 00 (North Latitude) and 112 30 00 (West Longitude).

will allow both Bagdad and Chino Valley to have the services they deserve.

10. In conclusion, the Commission has a paramount duty to serve the public interest and preserve for Bagdad its only authorized broadcast station. Having already committed to serve Bagdad in its application, such a result presents absolutely no harm to Petitioner. As for Chino Valley, the Commission, at the first opportunity, should conduct a rule making to allot a first channel to that community. By providing both communities with allotments, the Commission will take actions that truly serve the public interest.

Respectfully submitted,

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By: 

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Dated: March 11, 1996

CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 11th day of March, 1996, served a copy of the foregoing "Comments" on the following party by first-class mail, postage prepaid:

21st Century Radio Ventures, Inc.
Attn: James L. Primm, President
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